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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 JOHNNY TCHANG, an individual
15 Plaintiff,

16 vs.

17 NEW VALLEY, LLC, a limited liability
18 company; and DOES 1 through 10,
19 Defendants.
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Case No.: 2:15-cv-08591

COMPLAINT FOR

- (1) PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF AND DAMAGES**
- (2) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**
- (3) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

1 **I.**
2 **SUMMARY**

3 1. This is a civil rights action by plaintiff Johnny Tchang (“Plaintiff”) for
4 discrimination at the building, structure, facility, complex, property, land,
5 development, and/or surrounding business complex located at: 1421 E. Valley Blvd.,
6 Alhambra CA 91801 (the “Property”).

7 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees
8 and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§
9 12101, et seq.) and related California statutes¹ against defendant, the tenant and/or
10 owner of the Property, NEW VALLEY, LLC, a limited liability company
11 (“Defendant”).

12 **II.**
13 **JURISDICTION**

14 3. The Court has personal jurisdiction under 28 U.S.C. §§ 1331 and 1343
15 for ADA claims.

16 4. Supplemental jurisdiction for claims brought under parallel California
17 law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C §
18 1367.

19 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

20 **III.**
21 **VENUE**

22 6. All actions complained of herein take place within the jurisdiction of the
23 United States District Court, Central District of California, and venue is invoked
24 pursuant to 28 U.S.C. § 1391(b),(c).

25 **IV.**
26 **PARTIES**

27 7. Defendant is, or was at the time of the incident, the owner, operator,

28 ¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may
amend his complaint at a later time upon discovery of facts which give rise to such a claim.

- a. Accessible parking spaces have missing and/or incorrect warning signage at the parking facilities thus making it difficult for Plaintiff to determine which spaces are intended for and will accommodate disabled persons.
- b. Accessible parking spaces do not have the required tow away signage. In the past Plaintiff has parked in an accessible parking space only to have a car park illegally in the access aisle, thus preventing Plaintiff from being able to access his car. Without a tow away signage, Plaintiff has no means of contacting a tow company to tow away the car.
- c. Accessible parking spaces are not properly configured and do not have access aisles with sufficient floor space. Specifically, access aisles serving accessible parking spaces are blocked by a cart return structure. Without an accessible parking space accompanied by a properly configured access aisle, this makes it very difficult for Plaintiff to transfer from his car into his wheelchair and vice versa.

12. These barriers to access are listed without prejudice to plaintiff citing additional barriers to access after inspection by plaintiff's access consultant, per the 9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008). These barriers prevented Plaintiff from enjoying full and equal access to the Property.

13. Plaintiff was deterred from visiting the Property as a result of the accessible barriers he encountered. He continues to be deterred from visiting the Property because of the future threats of injury created by these barriers.

14. Defendant knew that these elements and areas of the Property were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendant has the financial resources to remove these barriers from the Property (without much difficult or expense), and make the Property accessible to the physically disabled. To date, however, the Defendant refuses to either remove those barriers.

1, 1982, thus requiring access complying with the specifications of Title 24 whenever each such “alteration, structural repair or addition” was carried out. On information and belief, Defendant, and/or their predecessors in interest carried out alterations, structural repairs, or additions to the building during the period Title 24 has been in effect. On information and belief, alterations, structural repairs, or additions which triggered access requirements also occurred between July 1, 1970 and July 1, 1982 and required access pursuant to the A.S.A. (American Standards Association) Regulations then in effect pursuant to the incorporated provisions of California Government Code §§ 4450 et seq. and California Health & Safety Code §§ 19959.

19. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

20. Further, each and every violation of the Americans With Disabilities Act of 1990 (as pled in the Second Cause of Action, *infra*, the contents of which are repled and incorporated herein, word for word, as if separately repled), also constitutes a separate and distinct violation of California Civil Code § 54(c), thus independently justifying an award of damages and injunctive relief pursuant to California law, including but not limited to Civil Code §§ 52, 54.3.

21. Further, each and every violation of the Americans With Disabilities Act of 1990 (as pled in the Second Cause of Action herein below, the contents of which are repled and incorporated herein, word for word, as if separately repled), also constitutes a separate and distinct violation of Civil Code § 54.1(d), thus independently justifying an award of damages and injunctive relief pursuant to California law, including but not limited to Civil Code §§ 52, 54.3.

VII.

SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW

**INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE
AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL
CODE SECTION 51(f)**

22. Plaintiff incorporates the allegations contained in paragraphs 1 through 21 for this claim and incorporates them herein.

23. At all times relevant to this complaint, California Civil Code § 51 has provided that physically disabled persons are free and equal citizens of the state, regardless of disability or medical condition:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Cal. Civ. Code § 51(b).

24. California Civil Code § 52 provides that the discrimination by Defendant against Plaintiff on the basis of his disabilities constitutes a violation of the anti-discrimination provisions of §§ 51 and 52.

25. Defendant's discrimination constitutes a separate and distinct violation of California Civil Code § 52 which provides that:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to section 51, 51.5 or 51.6 is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5 or 51.6.

26. Any violation of the Americans with Disabilities Act of 1990 (as pled in

1 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
2 thus independently justifying an award of damages and injunctive relief pursuant to
3 California law. Per § 51(f), “[a] violation of the right of any individual under the
4 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
5 section.”

6 27. The actions and omissions of Defendant as herein alleged constitute a
7 denial of access to and use of the described public facilities by physically disabled
8 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
9 result of Defendant’s action and omissions Defendant has discriminated against
10 plaintiffs in a violation of Civil Code §§ 51 and 51.

11 **VIII.**

12 **THIRD CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
13 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

14 28. Plaintiff incorporates the allegations contained in paragraphs 1 through
15 27 for this claim and incorporates them herein.

16 29. As part of the Americans with Disabilities Act of 1990 (“ADA”),
17 Congress passed “Title III – Public Accommodations and Services Operated by
18 Private Entities.” 42 U.S.C. § 12181 *et seq.* The Property is one of the “private
19 entities” which are considered “public accommodations” for purposes of this title,
20 which includes any “restaurant, bar, or other sales or rental establishment serving food
21 or drink.” § 301(7)(B).

22 30. The ADA states that “[n]o individual shall be discriminated against on
23 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
24 privileges, advantages, or accommodations of any place of public accommodation by
25 any person who owns, leases, or leases to, or operates a place of public
26 accommodation.” 42 U.S.C. § 12182.

27 31. The acts and omissions of Defendant set forth herein were in violation of
28 plaintiff’s rights under the ADA and the regulations promulgated thereunder, 28 CFR

1 Part 36 *et seq.*

2 32. The removal of each of the barriers complained of by plaintiff as
3 hereinabove alleged, were at all times herein mentioned "readily achievable" under the
4 standards §§ 301 and 302 of the ADA. As noted hereinabove, removal of each and
5 every one of the architectural barriers complained of herein were also required under
6 California law. Further, on information and belief, alterations, structural repairs or
7 additions since January 26, 1993 have also independently triggered requirements for
8 removal of barriers to access for disabled persons per § 303 of the ADA. In the event
9 that removal of any barrier is found to be "not readily achievable," Defendant still
10 violated the ADA, per § 302(b)(2)(A)(v) by failing to provide all goods, services,
11 privileges, advantages and accommodations through alternative methods that were
12 readily achievable.

13 33. On information and belief, as of the date of plaintiff's encounter at the
14 subject premises and as of the filing of this Complaint, the premises have denied and
15 continue to deny full and equal access to plaintiff and to other disabled persons,
16 including wheelchair users, in other respects, which violate plaintiff's rights to full and
17 equal access and which discriminate against plaintiff on the basis of his disability,
18 thus wrongfully denying to plaintiff the full and equal enjoyment of the goods,
19 services, facilities, privileges, advantages and accommodations, in violation of §§ 302
20 and 303 of the ADA. 42 USC §§ 12182 and 12183.

21 34. On information and belief, Defendant has continued to violate the law
22 and deny the rights of plaintiff and other disabled persons to access this public
23 accommodation since on or before plaintiff's encounters, as previously noted.
24 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, plaintiff is entitled to the remedies
25 and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC 2000(a)-
26 3(a), as plaintiff is being subjected to discrimination on the basis of disability in
27 violation of the ADA or has reasonable grounds for believing that he is about to be
28 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)

1)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to
2 make such facilities readily accessible to and usable by individuals with disabilities to
3 the extent required by this title."

4 35. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil
5 Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations
6 adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a
7 qualified disabled person for purposes of § 308(a) of the ADA who is being subjected
8 to discrimination on the basis of disability in violation of Title III and who has
9 reasonable grounds for believing he will be subjected to such discrimination each time
10 that he may attempt to use the property and premises.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays that this court award damages and provide relief
13 as follows:

14 1. Issue a preliminary and permanent injunction directing Defendant as current
15 owners, operators, lessors, and/or lessees of the property and premises to modify the
16 above described property and premises and related facilities so that each provides full
17 and equal access to all persons, including but not limited to persons with physical
18 disabilities who use wheelchairs, and issue a preliminary and permanent injunction
19 directing Defendant to provide and maintain facilities usable by plaintiff and similarly
20 situated persons with disabilities, and which provide full and equal access, as required
21 by law, including appropriate changes in policy;

22 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied
23 that Defendant's unlawful policies, practices, acts and omissions, and maintenance of
24 inaccessible public facilities as complained of herein no longer occur, and can not
25 recur;

26 3. Award to plaintiff all appropriate damages, including but not limited to
27 statutory damages, general damages and treble damages in amounts within the
28 jurisdiction of this Court, all according to proof;

1 4. Award to plaintiff all reasonable restitution for Defendant's unfair competitive
2 practices;

3 5. Award to plaintiff all reasonable statutory attorney fees, litigation expenses, and
4 costs of this proceeding as provided by law;

5 6. Award to plaintiff prejudgment interest pursuant to California Civil 17 Code§
6 3291;

7 7. Grant such other and further relief as this Court may deem just and proper.
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9 ASCENSION LAW GROUP, PC

10 DATE: November 3, 2015

11 _____/s/ Pamela Tsao_____
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13 Pamela Tsao, attorney for Plaintiff

14 JOHNNY TCHANG
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

ASCENSION LAW GROUP, PC

DATE: November 3, 2015

/s/ Pamela Tsao

Pamela Tsao, attorney for Plaintiff

JOHNNY TCHANG